

MASSACHUSETTS
40 main st, suite 301
florence, ma 01062
tel 413.585.1533
fax 413.585.8904

WASHINGTON
501 third street nw, suite 875
washington, dc 20001
tel 202.265.1490
fax 202.265.1489



August 30, 2011

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation
WT Docket No. 11-65**

Dear Ms. Dortch,

We submit this notice in compliance with Section 1.1206(b) of the Commission's rules.

On August 9th, 2011, representatives of Free Press met with members of the FCC's transaction team to discuss and rebut arguments made by AT&T in support of its proposed acquisition of T-Mobile, USA. On August 26th, 2011, Free Press Research Director S. Derek Turner phoned Michael Steffen of the Office of General Counsel phoned to follow-up on some of the arguments and evidence presented in the August 9th meeting. In particular, Mr. Turner addressed arguments made by representatives of AT&T in an August 4th meeting and subsequent August 8th letter.¹ In that letter, AT&T asserted that in early January 2011, its senior management team rejected a proposal to expand its LTE deployment to 97 percent of the U.S. population. Also in that letter, AT&T asserted that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION]

The purpose of this written *ex parte* is to summarize the conversation between Mr. Turner and Mr. Steffen and more fully address this **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** and AT&T's assertion that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

¹ Letter from Richard L. Rosen, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 11-65 (filed Aug. 8, 2011) (*August 8th AT&T Letter*).

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[END HIGHLY CONFIDENTIAL INFORMATION]

Rebutting AT&T's assertions is a straightforward exercise since the very same documents cited by AT&T as proof **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] actually contradict AT&T's claims.

As the Commission noted in its August 24th letter to AT&T,² **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

² Letter from Renata Hesse to Richard Rosen, WT Docket No. 11-65 (released August 24, 2011).

³ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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[END HIGHLY CONFIDENTIAL INFORMATION]

Thus, we see that AT&T's own real-time communications directly contradict the story it is now telling the Commission. This should come as no surprise, as Free Press has already detailed to the Commission how several other internal AT&T communications reveal the same basic fact: the decisions made by senior AT&T management [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] and January 15th when the acquisition was proposed to Deutsche Telekom were not decisions to stop their LTE build at 80 percent of the population, but were simply decisions [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] There is other evidence from the weeks following the early January meetings that shows the plan for the [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

⁵ [END HIGHLY CONFIDENTIAL INFORMATION]

However, whether or not AT&T [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] does not matter for the merger review. AT&T cannot substantiate its demonstrably false claim of needing the acquisition to "allow" it to build LTE to 97 percent of the population by 2018 as a *merger-specific* claim, because it cannot conclusively demonstrate that this benefit could not be "attained by practical alternatives that mitigate competitive concerns." As the record clearly shows, [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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⁴ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁵ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁶ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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⁸ [END HIGHLY CONFIDENTIAL INFORMATION] Thus, we see that AT&T could in fact achieve this benefit by “practical alternatives that mitigate competitive concerns” at a [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION] Last year AT&T spent a total of \$9.7 billion in capital for its wireless division. Thus the full buildout of LTE by 2018 would require AT&T to increase its capital outlay by [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] Put another way, based on the projected revenues AT&T will earn over the next 7 years,⁹ this incremental increase in capital is so small that AT&T’s capital intensity (capital expenditures as a percentage of revenues) could [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] from the company’s 15.7 percent capital intensity level in 2010.¹⁰

[END HIGHLY CONFIDENTIAL INFORMATION]

⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁸ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION]

⁹ SNL Kagan estimated (pre-merger) that AT&T’s wireless revenues will increase from \$58.5 billion in 2010 to \$78.1 billion in 2017.

¹⁰ Based on the SNL Kagan 2017 revenue estimate, AT&T would have to spend \$12.3 billion in capital to equal last year’s 15.7 percent capital intensity level. AT&T’s 2010 wireless capital outlay was \$9.7 billion. Thus, if the company were to spread the [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] incremental cost of full LTE deployment over the years between now and

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Further, if the Commission is considering the “but for” world where the merger is rejected, the evidence demonstrating that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] clearly demonstrates AT&T would have, and *will* build an all-LTE network without acquiring T-Mobile.

AT&T’s current case basically boils down to it pleading with the FCC to help ensure the company has near-term profit margins that are higher than anyone else in the industry. However, making AT&T the best-positioned carrier for the future and insulating it from competitive threats is not the Commission’s job, and doing so does not equate to serving the public interest.

Sincerely,

_____/s/____

S. Derek Turner
Research Director
Free Press

cc: Michael Steffen

2018, the company could still see a **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**
[END HIGHLY CONFIDENTIAL INFORMATION] in capital intensity.